IN THE
SUPREME COURT OF THE UNITED STATES
October Term [redacted] 1961

CHARLES W. BAKER, ET AL.,
Appellants

v.

JOE C. CARR, ET AL.,
Appellees

ON APPEAL FROM THE DISTRICT COURT
OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF TENNESSEE

MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

AND

BRIEF FOR MARVIN FORTNER, W. D. ALBERTS, J. K. MILNER, CLEVE ALLEN, JR., CARL STANTON AND SAM MAXWELL AS AMICI CURIAE

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INDEX

TABLE OF AUTHORITIES

Cases:

CONSTITUTION OF THE UNITED STATES:

STATE CONSTITUTIONS:

CONGRESSIONAL:

STATE STATUTES:

MISCELLANEOUS:

IN THE,
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 103

CHARLES W. BAKER, ET AL.,

Appellants

v.

JOE C. CARR, ET AL.,

Appellees

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE

MOTION OF SIX MISSISSIPPI TAXPAYERS FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

Pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States, Marvin Fortner, W. D. Alberts, J. K. Milner, Cleve Allen, Jr., Carl Stanton and Sam Maxwell ("Mississippi Taxpayers and Qualified Voters") respectfully move for leave to file as amici curiae a brief in the above entitled case and, in support of such Motion, make the following statement:

1. The above entitled case, (the "Tennessee Case"), involves the legality of a Tennessee legislative reapportionment Act (Sections 3-101—3-107 Tenn. Code Ann.), which Act, it is alleged, violates the Tennessee and Federal Constitutions, and particularly the equal protection clause of the Fourteenth amendment to the Federal Constitution and the Civil Rights Acts.

2. The six Mississippi taxpayers are complainants, on behalf of themselves and all other Mississippi taxpayers similarly situated, in a suit in equity against Ross R. Barnett, Governor of the State of Mississippi; Heber Ladner, Secretary of State of the State of Mississippi; Joe T. Patterson, Attorney General of the State of Mississippi; individually and as members of the Mississippi State Election Commission; and each of the County Election Commissioners of the 82 County Election Commissions in Mississippi, individually, as members of said commissions, and their successors in office, said suit now pending and at issue in the Chancery Court of Harrison County, Mississippi, Docket No. 43,076 (the "Mississippi Case"). In the Mississippi Case the complainants seek to enjoin, as violative of the Mississippi Constitution, the Federal Constitution and the Act of Congress of February 23, 1870, admitting the State of Mississippi to representation in Congress as one of the States of the Union, the election of Representatives and Senators to the Mississippi Legislature under the provisions of the present apportionment Act (Chapter 408 of the Mississippi Laws of 1956).

3. The Complaint in the Mississippi case alleges:

(a) That the present Mississippi Constitution of 1890 violates the basis of suffrage determined and required as a condition precedent in the Act of Congress admitting Mississippi to representation in Congress;

(b) That the present Mississippi Constitution and Legislative Acts thereunder violate the equal protection clause of the Fourteenth Amendment to the Federal Constitution;

(c) That the Mississippi Constitution and legislative Acts thereunder violate the Federal Civil Rights Acts;

(d) That the complainants and other taxpayers and qualified electors of the State of Mississippi are deprived of a truly democratic and representative State Legislature as guaranteed by Section 4 of Article IV of the United States Constitution;

(e) That the present Mississippi Legislature consists of a number of representatives in excess of the constitutional maximum limitation and a number of senators in excess of the constitutional maximum limitation;

(f) That the Mississippi Constitution of 1890 creates and establishes a gerrymander, the result of which is to dilute the value of votes in certain geographical areas to an extent, for all practical purposes, tantamount to negation;

(g) That the present Mississippi Constitution of 1890 has, on numerous occasions, been altered and amended by the Legislature in the matter of legislative apportionment without submission to, or ratification by, the qualified electors;

(h) The present Mississippi Constitution of 1890 was never submitted to, nor ratified by, the qualified electors as required by the Mississippi Constitution of 1869; and

(i) That as a result of the failure of the Mississippi Legislature to reapportion itself periodically as contemplated by the Constitution, the qualified electors are deprived of representative political delegations to Party Conventions with consequent denial of equal rights in the nomination of party candidates for President and Vice-President of the United States, as well as the adoption of party platforms.

4. The Mississippi Case involves some issues in common with the Tennessee Case and the determination of this Court in the Tennessee Case may affect the outcome of the Mississippi Case.

5. The Mississippi taxpayers fully support the positions advanced by appellants in the Tennessee Case, but the facts with respect to the Tennessee legislative apportionment are different from those involved in the Mississippi Case, in that the present Mississippi Constitution of 1890 is itself under attack as being violative of a solemn treaty between the Federal Government and the State of Mississippi as the same pertains to suffrage. Moreover, in the Mississippi Case the Mississippi taxpayers complain of various and sundry constitutional alterations by Legislative Act without ratification by the qualified electors as required by the Mississippi Constitution.

6. The Mississippi taxpayers seek by a brief as amici curiae to present to this Court certain legal positions to the end that the judgment of this Court in the Tennessee Case (a) will be based upon positions which, if made applicable to similar issues in the Mississippi Case would not be prejudicial to the Mississippi taxpayers and (b) will not be based upon positions which might be inferentially dispositive of issues in the Mississippi Case which are not before the Court in the Tennessee Case.

7. While the parallel legislative failures to reapportion periodically for a period of sixty years, the constitutional mandates to the contrary notwithstanding, demonstrate a related interest in the subject matter, the Mississippi taxpayers believe that legal arguments will not be adequately presented by the parties touching upon the reapportionment issues peculiar to the Mississippi Case.

8. The appellants have consented to the filing of a brief by the Mississippi taxpayers as amici curiae but the appellees have refused consent.

9. The brief which the Mississippi taxpayers request to file as amici curiae accompanies this motion.

Respectfully submitted,

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BRIEF OF SIX MISSISSIPPI TAXPAYERS AND QUALIFIED VOTERS AS AMICI CURIAE

Marvin Fortner, W. D. Alberts, J. K. Milner, Cleve Allen, Jr., Carl Stanton and Sam Maxwell (Mississippi Taxpayers and Qualified Voters) file this brief, contingent upon the Court's granting the motion for Leave to File a Brief as Amici Curiae in the above appeal from a judgment of the District Court of the United States for the Middle District of Tennessee entered on February 5, 1960, granting a motion to dismiss filed in said cause by appellees.

INTEREST OF THE AMICI CURIAE

The Mississippi Taxpayers, who are qualified voters in the State of Mississippi, are complainants on behalf of themselves and other Mississippi taxpayers and qualified voters similarly situated, more than two thousand of whom have filed petitions to intervene as parties complainant, in a suit pending in the Chancery Court of Harrison County, Mississippi seeking to restrain the State and County Election Commissions from holding future elections to the Mississippi Legislature under Chapter 408 of the Mississippi Laws of 1956 as being violative of the State and Federal Constitutions, the Civil Rights Acts and the Act of Congress of February 23, 1870, admitting Mississippi to representation in the United States Congress.

As set forth in the Motion for Leave to File this Brief, the Mississippi taxpayers and qualified voters allege in their Complaint that numerous violations of both the Mississippi and Federal Constitutions deprive them and other citizens of equality in suffrage, and reference is here made to said Motion for additional details with respect to their interest in the above entitled case.

ARGUMENT

I

THE HISTORY OF REAPPORTIONMENT CASES

In reviewing the early cases involving the validity of state reapportionment statutes, we find, without exception, that where substantial disparity among the sizes of state legislative districts exists, the state courts have invalidated such acts on the ground that they conflict with the state constitution. Most of these cases involve apportionment statutes enacted shortly before the litigation was instituted. Relief, as in the instant case, was always sought against election officials. The following cases vividly illustrate the complete absence of difficulty the courts experienced in dealing with such a problem.

In *Board of Supervisors v. Blacker*, 92 Mich. 638, 52 N.W. 951 (1892) a writ of mandamus was granted against the Secretary of State who was ordered to conduct the election for members of the state legislature under the provisions of an earlier constitutional apportionment law.

In *Giddings v. Secretary of State,* 93 Mich. 1, 52 N.W. 944 (1892) a writ of mandamus was granted against the Secretary of State to restrain him from holding an election for members of the state legislature under an 1891 act and to compel him to hold it under an 1885 act; however, since the 1885 act was also found to be unconstitutional, the court ordered the election under the 1881 act unless the governor called a special session of the legislature in time to make a new apportionment.

In *State v. Cunningham,* 81 Wis. 440, 51 N.W. 724 (1892), plaintiff brought a bill in equity to enjoin the Secretary of State from holding an election for members of the state legislature under an unconstitutional apportionment act. The court in holding the act invalid and enjoining the Secretary of State from conducting an election under it stated as follows at p. 729:

> "This apportionment act violates and destroys one of the most sacred rights and privileges of the people of this state, guaranteed to them by the Ordinance of 1787 and the Constitution, and that is 'equal representation in the legislature'."

In *Baird v. Board of Supervisors,* 138 N. Y. 95, 33 N.E. 827, (1893) a writ of mandamus was issued against the King's County Board of Supervisors ordering them to divide the county into legislative assembly districts of equal population. See also *Williams v. Secretary of State,* 145 Mich. 447, 108 N.W. 749 (1906); *Ragland v. Anderson,* 125 Ky. 141, 100 S.W. 865 (1907); cf. *Parker v. State,* 133 Ind. 178, 32 N.E. 836 (1892); *Denny v. State,* 144 Ind. 503, 42 N.E. 929 (1896).

The early cases involving judicial review of legislative apportionment statutes were all filed against election officials. Equitable relief was sought against such election officials restraining them from conducting the next election under the existing apportionment statute and directing them to hold the election under an earlier act which had presumably been repealed. The courts, without exception, not only entertained such actions and invalidated the later acts where substantial discrimination existed, but further they enjoined the election officials from holding elections under the invalid acts and directed that the election be held under the earlier act. Later cases have also reached this same result. *Stiglitz v. Schardien,* 239 Ky. 799, 40 N.W. 2d 315 (1931).

Following the 1910 and 1920 federal censuses, many of the state legislatures failed to reapportion their legislative seats despite the specific and often mandatory provisions of their state constitutions requiring such action. This presented the voter and taxpayer with a new problem, namely, silent gerrymandering which is gerrymandering resulting from a complete failure to reapportion despite large population shifts. The State of Illinois presented a classical example. The Illinois Constitution provided that "the general assembly shall reapportion" after every federal census. *Illinois Constitution, Article IV, Section* 6. However, after a failure of the general assembly to perform this duty following both the 1910 and 1920 censuses, a suit was filed in 1926 which attempted to secure a writ of mandamus directed at the individual members of the legislature ordering them to reapportion. Note that plaintiff did not seek to invalidate the existing act but sought to compel passage of a new act through the medium of a writ of mandamus. The court, however, denied the writ invoking the doctrine of separation of powers and holding that the duty to reapportion the state was specifically imposed by the Constitution solely upon the legislative department and that it alone was responsible to the people for a failure to perform that duty. *Fergus v. Marks*, 321 Ill. 510, 152 N.E. 557 (1926).

A second attempt was made in Illinois to force legislative action in the form of a suit to enjoin the state treasurer from paying the salaries and expenses of the legislators on the ground that failure to reapportion prevented the legislature from being a legally constituted body. This action also met the same fate as the previous mandamus action. *Fergus v. Kinney*, 333 Ill. 437, 164 N.E. 665 (1928). Following this a third attempt was made, namely a quo warranto action seeking to oust the derelict legislators from office on the ground that they had been elected under an unconstitutional act. This action met the same fate. *People ex rel Fergus v. Blackwell*, 342 Ill. 223, 173 N.E. 750 (1930). Next a convicted criminal sought unsuccessfully to have the statute under which he was convicted declared void on the ground that it was passed by a legislature elected under an invalid apportionment act. *People v. Clardy*, 334 Ill. 160, 165 N.E. 638 (1929). Finally an attempt was made to restrain the expenditure of public funds to carry on an election under an

allegedly invalid apportionment statute; this action also failed. *Daly v. Madison*, 378 Ill. 357, 38 N.E. 2d 160 (1941).

In these cases plaintiffs were confronted with an apportionment statute which was approximately fair when passed in 1901; however, due to shifts in population, the statute had become discriminatory. Apparently, because a different problem was presented than in the case of an act which was discriminatory when passed, plaintiffs employed a different and impossible remedy, and in so doing, invited the very result which followed. It is clear that the court should not grant a writ of mandamus running to the legislature requiring them to act. Moreover, a successful quo warranto action would result in leaving the state without any legislative body whatsoever, as would enjoining of the holding of an election on any basis for a new legislature. Further to declare all laws passed by an improperly apportioned legislature invalid would strike down appropriation laws among others, thus destroying the state government and producing a complete state of chaos.

The early equity cases filed against election officials clearly hold that the court can review and, if found discriminatory, invalidate a legislative apportionment statute. Moreover, the court can restrain the election officials from holding an election under the invalid act. No cases were found denying relief until, as a result of the failure of the legislatures to reapportion periodically, the plaintiffs sought writs of mandamus, quo warranto, or decrees invalidating all laws passed by the improperly apportioned legislature. The courts, unable to grant the relief requested, simply dismissed such proceedings. This resulted in an erroneous legal doctrine against judicial interference in legislative apportionment proceedings, arising not because apportionment statutes are judicially impregnable, but simply because the plaintiffs pursued an impossible remedy. Manifestly, where an efficacious remedy is sought, as in the case at bar, the cases last cited are not authority against appellants' position.

II

CONTENTION OF APPELLANTS CONCURRED IN BY COURT BELOW BUT REMEDY HELD LACKING

The appellants contend that the failure of the Tennessee Legislature to reapportion itself since 1901 violates their constitutional rights. The Court below held, inter alia:

> "With the Plaintiffs' (appellants here) argument that the Legislature of Tennessee is guilty of a clear violation of the State Constitution and the rights of the Plaintiffs the Court entirely agrees. It also agrees that the evil is a serious one which should be corrected without further delay."

It would be useless consumption of the Court's time to here argue the equities involved in the case at bar or, for that matter, in any reapportionment case reaching the courts. Few would have the temerity or the audacity to seriously espouse a justification of legislative failure to reapportion. This Court, it may be assumed, is well aware of the malapportionment of State Legislatures throughout the Nation and the flagrant constitutional violations by State Legislatures with respect thereto. The question, therefore, resolves itself into one of remedy vel non. The power and authority of this tribunal to grant speedy and adequate remedial relief is unquestionable, and such relief is not without precedent. At least 44 cases[1] hold jurisdiction.

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[1] *Armstrong* v. *Mitten*, 95 Colo. 425, 37 P. 2d 757 (1934)
Asbury Park Press v. *Woolley*, 161 A. 2d 705 (June 1960)
Atty. General v. *Suffolk County Commissioners*, 224 Mass. 598, 113 N.E. 581 (1916)
Baird v. *Kings County*, 142 N.Y. 523, 37 N.E. 619 (1894)
Barrett v. *Hitchcock*, 241 Mo. 433, 146 S.W. 40 (1912)
Botti v. *McGovern*, 97 N.J.L. 353 (Sup. Ct. 1922)
Bowman v. *Dammann*, 209 Wis. 21, 243 N.W. 481 (1932)
Brooks v. *State ex rel Singer*, 162 Ind. 568, 70 N.E. 980 (1904)
Brophy v. *Suffolk County Apportionment Commissioners*, 225 Mass. 124, 113 N.E. 1040 (1916)
Colegrove v. *Green*, 328 U.S. 549 (1946)
Denny v. *State ex rel Basler*, 144 Ind. 503, 42 N.E. 929 (1896)
Donovan v. *Holtzman*, 8 Ill. 2d 87, 132 N.E. 2d 501 (1956)
Donovan v. *Suffolk County Commissioners*, 225 Mass. 55, 113 N.E. 740 (1916)
Dyer v. *Kazuhisa Abe*, 138 F. Supp. 220 (D.C. Hawaii, Three Judge Court, 1956)

The Court below further held:

"However, the remedies suggested by the Plaintiffs are neither feasible nor legally possible."

In the case of *McGraw vs. Donovan*, (Minn. 1958) 163 F. Supp. 184, the Federal District court in its courageous decision very effectively granted relief identical to that sought in the case at bar. Furthermore, the Federal District Court in the case of *Dyer vs. Kazuhisa Abe*, (D. Hawaii 1956) 138 F. Supp. 220, in another courageous decision, found it both feasible and legal to grant legislative reapportionment relief which proved most effective. Likewise, the New Jersey Supreme Court in the recent

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Fesler v. *Brayton*, 145 Ind. 71, 44 N.E. 37 (1896)
Giddings v. *Blacher*, 93 Mich. 1, 52 N.W. 944 (1892)
Heffernan v. *Carlock*, 198 Ill. 150, 65 N.E. 109 (1902)
Houghton County v. *Blacker*, 92 Mich. 638, 52 N.W. 951 (1982)
Jones v. *Freeman*. 193 Okla. 554, 146 P. 2d 564 (Appeal dismissed & cert. denied, 322 U.S. 717) (1943)
Magraw v. *Donovan*, 159 F. Supp. 901 (D.C. Minn. 1958) 163 F. Supp. 184 (D.C. Minn. Three Judge Ct. 1958)
Matter of Reynolds, 202 N.Y. 430, 96 N.E. 87 (1911)
Meighen v. *Weatherill*, 125 Minn. 336, 147 N.W. 105 (1914)
Merrill v. *Mitchell*, 257 Mass. 184, 153 N.E. 562 (1926)
Moran v. *Bowley*, 347 Ill. 148, 179 N.E. 526 (1932)
Opinion of the Justices, 18 Me. 458 (1842)
Parker v. *Powell*, 133 Ind. 178, 33 N.E. 119 (1892)
People ex rel Baird v. *Kings County*, 138 N.Y. 95, 33 N.E. 827 (1893)
People ex rel Woodyatt v. *Thompson*, 155 Ill. 451, 40 N.E. 307 (1895)
Preisler v. *Doherty*, 284 S.W. 2d 427 (Mo. 1955)
Prouty v. *Stover*, 11 Kan. 183 (1873)
Ragland v. *Anderson*, 125 Ky. 141, 100 S.W. 865 (1907)
Rogers v. *Morgan*, 127 Neb. 456, 256 N.W. 1 (1934)
Shaw v. *Adkins*, 202 Ark. 856, 153 S.W. 2d 415 (1941)
Sherrill v. *O'Brien*, 188 N.Y. 185, 81 N.E. 124 (1907)
Smith v. *Baker*, 74 N.J.L. 591 (Ct. of E & A, 1906)
Smith v. *Holm*, 220 Minn. 486, 19 N.W. 2d 914 (1945)
Smith v. *St. Lawrence County*, 148 N.Y. 187, 42 N.E. 592 (1896)
State ex rel Atty. Gen. v. *Cunningham*, 81 Wis. 440, 51 N.W. 724 (1892)
State ex rel Lamb v. *Cunningham*, 83 Wis. 90, 53 N.W. 35 (1892)
State ex rel Winnie v. *Stoddard*, 25 Nev. 452, 62 Pac. 237(1900)
State v. *Wrightson*, 56 N.J.L. 126 (Sup. Ct. 1894)
Stiglitz v. *Schardien*, 239 Ky. 799, 40 S.W. 2d 315 (1931)
Sullivan v. *Schnitger*, 16 Wyo. 479, 95 Pac. 698 (1908)
Williams v. *Sec. of State*, 145 Mich. 447, 108 N.W. 749 (1906)

case of *Asbury Park Press vs. Woolley*, (1960) 161 A. 2d 705, in a most dynamic decision reversed the trial court and very effectively granted reapportionment relief. Therefore, with all deference, we submit, by way of proverb, "the proof of the pudding is in the eating." If the remedy proved feasible and legal in the three cases above cited there is no apparent reason why Tennessee should be an exception.

The court below then held:

> "The alternative of an election at large is met with a number of insuperable objections. First, the Constitution of Tennessee specifically provides for the election of members of the legislature from counties and districts, and no provision whatever is made for a legislature composed of members elected at large."

Again with utmost deference and respect we suggest that the Tennessee constitutional provision with reference to legislative reapportionment must be read and considered as a whole and that it requires an enumeration of qualified voters and an apportionment every ten years following the year 1871 of representatives and senators in the General Assembly by counties and districts according to the number of qualified voters. Therefore, if the full constitutional mandate had been followed this case would not now be before the Court.

The court below then holds:

> "Practical considerations also are heavily weighed against such a remedy. It would lead to serious geographical inequalities and other discriminations, probably to a greater extent than those presently existing."

With continuing deference to the trial court, we respectfully submit that the "practical considerations" would operate in exactly the reverse of the court's theory. In our humble judgment, it is inconceivable that any State Legislature, under a complete domination by rural over-represented counties, would ever permit an election of its membership from the State at large when it could prevent such an election simply by complying with their oaths of office in following the constitutional mandate to reapportion itself on a constitutionally prescribed basis. And that is the extent of the relief sought in the case before this Court as we view it.

The trial court's presumption of probability that an election from the State at large would lead to serious geographical inequities and other discriminations to a greater extent than those presently existing, we earnestly submit, is at most judicial speculation without support or basis. We suggest that it is far more logical to assume that a legislature elected by all of the qualified voters of the state would be more amenable to public demand than a legislature elected by a minority which the Court admits is guilty of a clear violation of the State Constitution, the evil of which, the Court says, is serious and should be corrected without delay. It would be naive, indeed, to suppose that State Legislatures are unaware of their duty respecting periodic reapportionment.

The appellants further contend, and we support their position, that the result of the failure to reapportion State Legislatures creates a condition violative of the Fourteenth Amendment to the United States Constitution and the Civil Rights Acts which, in the defense of human rights, must be presented and urged with all the force at our command.

III

RURAL MINORITY CONTROL VERSUS URBAN MAJORITY CONTROL

Without any thought or intention to reflect, in any way, discredit of any kind upon those fine and substantial citizens who dwell in our rural areas, nevertheless the gravamen of reapportionment cases arises as a controversy, at least to a large extent, between rural and urban areas. The rural areas, on the one hand, strongly oppose their displacement in the dominant political power acquired by them through inheritance and maintained by refusal of relinquishment, while the urban areas, on the other hand, seek equal representation as a fundamental and inherent right under a republican form of government. Equal representation is a right under the concept of democracy as guaranteed by the Constitution of the United States, and special favor is tenable neither as a divine nor political privilege. While it is true that nature, in her partiality, designates here and there an individual as the favored recipient of her special endowments, and ordains him to a particular sphere of eminence, it is rarely that she allocates such an array of special talents within

the confines of rural areas to the exclusion of urban areas, and on the whole it may be safely assumed that the destiny of the several states will be protected and preserved as well through equal representation as it will by dominant rural minority control. If we must concede preemption by rural minorities in the field of legislative representation, then under what conceivable theory can the advocates of democracy criticize totalitarianism, and most especially today when the whole world is literally on fire?

Every legislative vote of the under-represented counties has now more than quadrupled in importance to its represented people by the very distress which we here seek to alleviate, but mere "importance" lacks quantitative value in the computation of votes requisite to legislative enactments. The willful and intentional failure of State Legislatures periodically to reapportion themselves, their constitutional mandates notwithstanding, is essentially a moral and political malignancy which must be eradicated in all events.

It is indeed a strange manifestation of equity and fairness to demand States' Rights on the one hand, and at the same time to deny individual rights within the State itself. Obviously these individual rights cannot be salvaged by the people through political resort to the election polls, for the apparent reason that the legislatures will not allow a referendum thereon when so to do would be tantamount to their political demise. Therefore, if relief in the matter of legislative reapportionment is denied by this Court it may not be entirely facetious to predict that some legislatures, assured of their impunity in matters violative of the United States Constitution, may shortly grant Letters of Marque and Reprisal, and even perhaps enact Bills of Attainder against those who dare challenge their authority. And it is feared that in some areas the legislative frustration resulting from the Court's recent nullification of the doctrine of interposition will serve to increase the retaliatory proclivities of such bodies to an extent which might well endanger the enactment of sane legislation, but which condition could, and would, be greatly diluted, if not entirely dissipated upon reapportionment.

The Court, in our humble opinion, unquestionably has jurisdiction. Its intervention is both urgent and imperative. The Court's decision in this case will be far reaching and will very

materially affect the inalienable rights of the qualified electors in all of the fifty states comprising the greatest nation of democracy on earth today. If their pleas shall go unheeded by the courts, they have only one course left to pursue—a course which is fraught with drastic consequences, but which, it is believed by many of its advocates, will be successful if invoked, and so popular is that conviction that newspapers suggest it editorially. If and when, as a last resort, large groups of tax payers in urban areas withhold tax payments from the State, the hospitals, schools and other State institutions will be forced to close their doors, and then, perhaps, the legislatures will come to recognize that legislative larceny will no longer be sanctioned nor tolerated by the people.

To state it mildly, a visitation upon the country of the repercussions resulting by a chain reaction throughout the several states from such a fiscal revolution is not a matter to be viewed with anticipatory delight.

The people are rapidly awakening to the fraud that is being perpetrated upon them, and just how long they will continue to bear the yoke, to yield the stroke and to serve the will of the minority is indeed problematical.

On the evening of Thursday, January 5, 1961, a one hour nation-wide telecast on the Documentary Program of the Columbia Broadcasting System was presented involving the inequities of present legislative apportionment, and in which many of the Nation's leading statesmen, including United States Senators and State Governors, appeared and expressed their deep concern and alarm at the ever increasing deplorable condition prevalent in the matter of State legislative apportionment. And it is noteworthy to suggest that the case here under consideration by the Court, and the Court's announced willingness to hear the same, was mentioned in the telecast as being perhaps the most significant ray of hope on the reapportionment horizon today. It is indeed unfortunate that the telecast, which graphically and pictorially presented the apportionment problems presently existing in Vermont, Idaho, Oklahoma, Mississippi, Tennessee, New York, Pennsylvania, Florida, Georgia and other States, cannot in some way be made an exhibit here for full review by this Court.

IV

THE PRINCIPLES OF REPRESENTATIVE GOVERNMENT REQUIRE JUDICIAL ENFORCEMENT OF THE RULE OF REPRESENTATION ACCORDING TO POPULATION

The principle of representative democracy is fundamental and basic to democratic government in America. Without it our State and National Constitutions would be impotent to give effect to the basic purposes of organized government. As James Madison phrased it (*The Federalist, No.* 39):

> "The first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principle of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible."

The politicial philosophy basing our Federal and state Constitutions is that government by the people is representative government; that representative government is a representative legislative body; that a representative legislative body is one selected according to a fair and equitable method.

If the purposes of a State Constitution are to be effectuated, the popular representation provisions of that instrument must be honored. Non-compliance defeats the purpose of the Constitution itself. The judicial role in the problem is one of holding government to its constitutional course.

A failure to secure compliance with the constitutional mandate regularly to reapportion is not merely a matter of a legislative duty left undone; it is a failure to secure for the people such government as our Constitution assures them they shall have. Where the legislative branch has failed to meet so fundamental a duty, the judicial branch should then act to uphold the Constitution. The policies underlying the structure of the government and the distribution of its powers, are not frustrated but rather are fulfilled by such judicial action. As Madison stated in (*The Federalist, No.* 48):

". . . unless these departments be so far connnected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained."

The argument that the doctrine of the separation of powers precludes jurisdiction, or relief, in the case at bar, is to pervert the text of the doctrine so as to defeat its own ends. The entire sense of the division of government into three separate departments was to establish a system of checks and balances which would avoid the very type of absolute power implied in any defense based upon the separation of powers doctrine. As Hamilton set forth the basis of judicial review in (*The Federalist, No. 78*):

"The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body, and, in case of a reconcilable difference between the two, to prefer the will of the people declared in the constitution to that of the legislature as expressed in statue."

Woodrow Wilson declared in his classic work *Constitutional Government in the United States,* at pp. 142-3 (1921):

"The constitutional powers of the courts constitute the ultimate safeguard alike of individual privilege and of governmental prerogative. It is in this sense that our judiciary is the balance-wheel of our entire system; it is meant to maintain that nice adjustment between individual rights and governmental powers which constitutes political liberty."

Any interpretation which would leave to the legislature the ultimate determination of the nature and scope of its responsibilities in the basic matter of popular representation, would be in derogation of the whole purpose of a written constitution, as well as of the doctrine of separation of powers.

In cases recognizing power of the court to declare apportionment unconstitutional, but refusing to grant relief, an "anarchy" argument has been presented to the courts *in terrorem*. A dismal picture of government dissolved is offered as an excuse for the abdication of the judicial function of guaranteeing observance

of constitutional mandates. The principal authority for the anarchy argument is *Fesler v. Brayton*, 145 Ind. 71, 44 N.E. 37 (1896). That case was decided by a divided court, in which the majority took the position that the court had full jurisdiction to declare an apportionment act unconstitutional, but it should not exercise that jurisdiction where there was no other valid act subsisting under which the members of the General Assembly could be apportioned. Implicit in this view is the notion that the legislature could not be trusted to perform its constitutional duty once that duty was clearly delineated by the court, and that the consequences of such legislative abdication would be the responsibility of the court and not of the legislature.

V

APPROPRIATE RELIEF

It will be noted that in all of the cases involving an attack upon recently enacted apportionment statutes, the defendants were the state election officials, and all orders ran to them. The only exception noted was *Baird v. Board of Supervisors, supra* involving the issuance of a writ of mandamus requiring a county board of supervisors to divide the county into legislative assembly districts of equal population. Further, after invalidating a recently enacted apportionment statute, the courts ordered election of the legislature under the next prior constitutional apportionment law.

A court order against election officials requiring that they hold the election for members of the legislature on an at large basis is essentially no different from holding election under an earlier act that is more discriminatory than the act that has just been declared invalid. In fact, it is far superior in that it possesses one salutory virtue which the other lacks, to-wit, it provides for complete equality as between the electors.

An at-large election is not unique nor is it without precedent. In fact, the entire congressional delegation from Minnesota ran at large in 1932 as the result of the decision of the United States Supreme Court. In *Smiley v. Holm*, 285 U.S. 355, 52 S.Ct. 397, 76 L.Ed. 795 (1932) in which the court declared Laws of Minn. 1931, Chap. 640 which apportioned Minnesota into nine Congressional Districts invalid because of a failure to comply with *Article 1, Section 4 of the United States Constitution*, in that

the Governor did not sign the bill and it was not passed by the two-thirds majority required over his veto.

In *Brown v. Saunders*, 159 Va. 28, 166 S.E. 105 (1932) the Virginia Legislature, as a result of a reduction in the Virginia delegation to Congress from ten to nine members after the 1930 census, passed a new congressional redistricting act. The Court held the act invalid on the ground of inequality in the size of the Congressional Districts contrary to *Article 2, Section 55 of the Virginia Constitution*. In so doing the Court stated that this was the first time in the 144 years that the entire membership of the House of Representatives of Virginia would be chosen by the electorate of the state at large. The Court stated:

> "However this may be, it is our duty, as it is the duty of all of us, to obey the mandate of the fundamental law."

In the same year Kentucky, Michigan and Missouri elected their entire Congressional delegations at large because the State Legislatures in those states enacted new redistricting laws which were subsequently declared invalid by the courts. There is thus ample precedent to support the relief which appellants here demand, namely, an at-large election.

Moreover in *Colegrove v. Green*, 328 U.S. 549, 66 S. Ct. 1198, 90 L. Ed. 1492 (1946) involving the validity of the Illinois Congressional districting act, Mr. Justice Black in his dissenting opinion concurred in by Messrs. Justices Douglas and Murphy said that the at-large election would provide suitable relief because it would place all the electors in the State of Illinois on equal basis. Mr. Justice Rutledge concurred separately with Messrs. Justices Frankfurter, Reed and Burton on other grounds resulting in plaintiffs being denied all relief; however, in so doing he stated:

> "I think, with Mr. Justice Black, that its effect (*Smiley v. Holm*) is to rule that this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable."

Thus Mr. Justice Rutledge, who joined with Mr. Justice Frankfurter to cast the decisive vote to deny relief in that case, nevertheless fully agreed with Messrs. Justice Black, Douglas and Murphy that the Court could afford plaintiffs the relief they requested, namely, an at-large election. We, therefore, submit that in *Colegrove v. Green, supra*, a majority of the justices sitting in the case agreed that the Court can and in proper circumstances

should order an at-large election.

In considering the *Colegrove* case, *supra*, it is important to bear in mind the first basis agreed upon by the three justices (who together with Mr. Justice Rutledge concurring, constituted a majority) was that the *Federal Reapportionment Act* of June 18, 1929, 46 Stat. L. 26, 2 *USCA* Sec. 2a simply contained no requirement "as to compactness, contiguity and equality in population of (Congressional) districts." The second basis for the decision and the one which the Court regarded as conclusive was that the *Federal Constitution* in Article 1, Sec. 4, had conferred upon Congress exclusive authority to secure fair representation by the States in the House of Representatives and left to that authority the determination of whether the States had properly fulfilled their responsibilities. The Court simply held that the plaintiffs had a complete remedy, to-wit, an appeal to Congress if the Illinois Legislature would not enact another Congressional Reapportionment Act. It is thus evident that the two fundamental bases for the opinion, namely, requirement with respect to equality and a complete remedy in the Congress, are both totally absent in the instant proceedings.

We further submit that the case for Federal judicial intervention in the reapportionment of a state legislature is much stronger than is the case for such intervention in congressional districts. It must be borne in mind that the House of Representatives is automatically reapportioned every ten years. The executive department after each census calculates mathematically the number of representatives each State is entitled to on the basis of its population and relates this information to Congress which, in turn, certifies it to the executive of each state. Thus, as to the 50 subdivisions there is equality of representation in the House. It is then simply a matter of each subdivision providing for equality in districts within itself. While the problem of gross inequality in one distsrict is of paramount importance to the people of that district, its effect on the overall representation in the House is minimal. Further, as to districts there is some incentive to insure equal representation due to the shifting of representatives by loss in one Statae or gain in another. It is not unlikely that the power of Congress to compel equality in the size of the congressional districts would be exercised because, although representatives in one state may be interested in preserving existing inequalities

for personal or selfish reasons, the other members are not interested parties and therefore could easily correct the situation. (See *The Role of the Judiciary in Legislative Reapportionment*, 42 Minn. Law Review 617-634, an excellent note which fully supports appellants' position.)

In *South v. Peters*, 339 U.S. 276, 70 S.Ct. 641, 94 L. Ed. 94 (1950) plaintiff unsuccessfully sought to set aside the Georgia "county unit" voting system in connection with a primary election involving U. S. senators as contrary to the *Fourteenth* and *Seventeenth Amendments*. The Supreme Court *per curiam* affirmed the lower court which held that under applicable Georgia County constitutional principle, there was no guarantee of a substantially equal vote in a primary election and that, therefore, the plaintiff possessed no right which could be constitutionally protected. This case is completely distinguishable and has no relation to legislative representation. Further, the plaintiff sought to challenge the manner in which the state chose to distribute its electoral strength which was admittedly a right retained by the states. In the instant proceeding the manner in which the State of Tennessee has chosen to distribute its electoral strength is not being challenged. This choice has been made and incorporated in the State Constitution in the form of a requirement for apportionment based on population. Discrimination has simply resulted from the legislature ignoring the constitutional mandate.

Three Federal District Court cases, namely, *Remmy v. Smith*, 102 Fed. Supp. 708 aff'd per curiam, 342 U. S. 916, 72 S. Ct. 368, 96 L. Ed. 685, (1952); *Radford v. Garry*, 145 Fed. Supp. 541 aff'd per curiam, 352 U. S. 991, 77 S. Ct. 559, 1 L. Ed. 2d 540 (1957); and *Perry v. Folsom*, 144 *Fed. Supp.* 874 (1956) are also not authority against appellants' position. The *Remmy* case, *supra*, was dismissed by the Court on the ground that it was premature, having been brought in 1951 immediately after the 1950 census without prior resort to the Pennsylvania State courts. The court in dismissing the action as premature stated that a suit based on the *Federal Civil Rights Act* and the *Fourteenth Amendment* would present novel questions as yet undecided. The *Remmy* case, *supra*, was also a mandamus proceeding against the Governor and all members of the State Legislature seeking to require them to pass a new apportionment statute.

In the *Radford* case, *supra*, the plaintiff sought a writ of man-

damus against the Governor, all members of the State Legislature and the Supreme Court, a remedy which the court obviously could not grant. Moreover, Oklahoma has the initiative. The court was fully aware that the citizens in the state had the remedy at hand to correct the situation. The *Perry* case, *supra*, also involved a request for writ of mandamus against the Governor, Lieutenant Governor, Secretary of State and all members of the State Legislature. Again, relief was sought which was beyond the power of the court to grant. Manifestly, the fact that the court does not grant a writ which is beyond its judicial power is certainly not authority against the position urged by these appellants who here seek relief of a type which this Court has complete power to grant.

The appellants herein seek a declaratory judgment and, if necessary, an injunction against the defendant election officials restraining them from holding an election pursuant to the existing legislative apportionment. Equity has on many occasions protected the right to a free and nondiscriminatory election. It is thus clear that the relief that appellants have requested is within the historical jurisdiction of equity. Moreover, the relief requested is not futile because the appellants have brought all parties before this Court who are responsible for the operation of the legislative election machinery in the State of Tennessee. Thus, in the event an injunction becomes necessary, the proper parties are before the Court as defendants, against whom such an injunction should run. The instant proceeding, therefore, is completely unlike that instituted by the plaintiffs in the *Ramey*, *Radford* and *Perry* cases, *supra*. Manifestly, the instant proceeding does not bring the Court in conflict either directly or indirectly with the Tennessee Legislature.

The appellants appear confident that if the injunction which they seek is granted by the Court restraining the holding of the election for members of the State Legislature under the present districting act and directing that the election be held on an at-large basis, the Governor of Tennessee would summon the Legislature into special session to pass a new legislative apportionment act.

The reported cases fairly abound with authority for the proposition that it is the duty of the Court of Equity "to strike a proper balance between the needs of the plaintiff and the con-

sequences of giving the desired relief." *Eccles v. Peoples Bank*, 333 U.S. 426, 431, 68 S. Ct. 641, 92 L.Ed. 784 (1948). Further, "equity will administer such relief as the exigencies of the case demand at the close of the trial." *Chapman v. Sheridan-Wyoming Coal Co.*, 338 U.S. 621, 630, 70 S. Ct. 392, 94 L.Ed. 393 (1950). In *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 330, 64 S. Ct. 587, 88 L.Ed. 754 (1944), the court stated:

> "The essence of equity jurisdiction has been the power of the chancellor to do equity and to mold each decree to the necessities of the particular case. Flexibility, rather than rigidity, has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustments and reconciliation between a public interest and private needs, as well as between competing private claims."

We submit that no principle of equity jurisprudence is more familiar than that illustrated by the foregoing statements. See also *Central Kentucky Co. v. Commissioner*, 290 U.S. 264, 271, 54 S. Ct. 154, 78 L. Ed. 307 (1933) and *Alexander v. Hillman*, 296 U.S. 222, 239, 56 S. Ct. 204, 80 L. Ed. 192 (1935).

Pomeroy's Jurisprudence, Fifth Ed., Sec. 109 states:

> "Equitable remedies, on the other hand, are distinguished by their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules that govern their use. There is, in fact, no limit to their variety and application; the court of equity has the power of devising its remedy and shape it so as to fit the changing circumstances of every case and the complex relationship of all the parties."

Story, Equity Jurisprudence, 14 Ed. Sec. 28, states:

> "Although they (equity courts) have prescribed forms of proceeding, the latter are flexible, and may be suited to the different postures of the case. They may adjust the decrees so as to make most, if not all, of these exigencies; and they may vary, qualify, restrain, and model the remedy so as to suit it to mutual and adverse claims, controlling equities, and the real and substantial rights of all the parties."

McClintock, Equity, 2d Ed. Sec. 30, p. 78 states:

> "The power of a court of equity to mold its decree to meet the needs of the situation is one that is often overlooked by both counsel and court. In many cases the decision is rendered on the apparent assumption that the court must

either grant or refuse in entirety the relief demanded by plaintiff. We have already seen that the court may impose on plaintiff the performance of conditions which will prevent injustice or great hardship to defendant. In other cases the court may, by trial for limited term, determine just how much relief is required to meet the situation, and thereby avoid unnecessary hardship to any of the parties."

VI

MATTERS CONTAINED IN MOTION OF AMICI CURIAE WHICH, THOUGH EXTRANEOUS OF ISSUES PRESENTED IN CASE AT BAR, ARE NEVERTHELESS GERMANE TO THE SUBJECT MATTER

While the relief sought in the Mississippi Case is practically identical to that sought in the case at bar, it is believed that the evils apparent and admitted in the Mississippi Case are perhaps the most brazenly calculated discrimination of human suffrage rights ever presented to a court.

The Mississippi Supreme Court, in passing upon that State's Constitution in the case of *Sproule* vs. *Fredricks,* 11 So. 472, held, inter alia, as reflected in the sylabus of the Court at page 472 as follows:

> "The changes made by the Constitution of 1890 in the basis of suffrage, though violative of Act Cong, 1870, readmitting the State of Mississippi into the Union, do not invalidate that instrument, as Congress has no power to regulate the rights of suffrage."

As to the validity in 1961 of that Court's holding in 1892 to the effect that "Congress has no power to regulate the rights of suffrage" we seriously question and deem it unnecessary to cite authority in contradiction thereto. On Page 474 of the Court's opinion in that case it was held, with respect to the power of a Constitutional Convention:

> "The sole limitation upon its powers is that no change in the form of government shall be done or attempted. The spirit of republicanism must breathe through every part of the framework***."

With this holding we are in accord. Moreover, it is manifest that the Court in 1892 had no way of knowing that all Mississippi

legislatures for the next seventy years would purposely ignore the constitutional requirement[2] of decennial reapportionment.

In the case of *Lawson vs. Jeffries,* 47 Miss. 686, 12 Am. Rep. 343, (1873) the Mississippi Supreme Court held that a Constitutional Convention has no power to impair vested rights of individuals and that whether a right has vested is a question for judicial determination. The Court in that case further held:

> "A constitutional convention is convened to build up, not to tear down; to protect, not to destroy. Our American system is peculiarly one of established, regulated law. If, in our system, there is any one feature pre-eminently prominent, it is a sacred regard for law and private rights. A part of the American system, impressed alike upon the people and the States, is the distribution of powers into legislative, executive and judicial. Although a constitutional convention represents the sovereignty of the people, this sovereignty is subordinate to the constitution of the United States and to the great American doctrines of justice, truth, right and law. Even in their sovereign capacity, the people do not possess the license of the commune on the one hand, nor absolute, unrestricted power on the other. Delegates are unrestricted as to the propositions they shall submit to the people; but even ratification does not validate violations of the national constitution, of law, and of rights already established. With the adoption of the federal constitution, arbitrary power, which had heretofore defied the rights of persons and property, was denied an existence, whether in national or State governments, or with the people in their sovereign capacity; and there was ordained a sacred and inviolable separation of legislative, executive and judicial authority. These principles are, with us, fundamental, and cannot be disregarded by a constitutional convention any more than the legislative, executive or judicial departments of a government can exercise the powers of each other. When they do, their acts are void."

When a State Supreme Court, in its official written and reported judicial decision, *Sproule vs. Fredricks, supra,* admits that

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[2] See Appendix A, *infra,* at Page 29.

the State Constitution violates the Act of Congress[3] by which the State was admitted to representation in the United States Congress, could it be seriously contended that a justiciable issue cognizable by this Court does not exist?

When such a State Constitution was never submitted to, nor ratified by, the electorate, could it be said that its adoption by the Convention alone does not violate the prior Constitution[4] requiring that amendments or alterations thereof must be ratified by a majority of the qualified electors?

Can such a Constitution, by an infamous and diabolical scheme perpetrated upon the people of its State, authorize and provide for the election of the Governor of the State[5] and the delegates[6] to the National Party Conventions, wherein Presidential and Vice-Presidential candidates are nominated, upon a basis of votes calculated by the number of representatives in the House from the several counties as established by the census of 1880 and at the same time evade with impunity the *Fourteenth and Fifteenth Amendments?*

Could any such Constitution create and establish a political gerrymander[7], lacking in any ascertainable or rational criteria for the establishment of the districts it created, basing them neither on population nor on area nor on assessed valuation nor on any combination of these or any other legal factors, without offending the *Fourteenth Amendment* to the United States Constitution? Or, will those who would defend such gerrymander dare to explain its real and intended purpose, realizing as they must that to do so would clearly expose the scheme to the inhibitions of the *Fifteenth Amendment* and thereby place themselves squarely within the teeth of this Court's recent holding in *Gomillion vs. Lightfoot*, 5 L. Ed. 2d 110.

Can a State Legislature, by its own enactment alone, increase its numerical composition[8] beyond the constitutional maximum limitation[9]?

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[3] See Appendix B, *infra*, at Page 29.
[4] See Appendix C, *infra*, at Page 31.
[5] See Appendix D, *infra*, at Page 31.
[6] See Appendix E, *infra*, at Page 32.
[7] See Appendix A, *infra*, at Page 29.
[8] See Appendix F, *infra*, at Page 33.
[9] See Appendix A, *infra*, at Page 29.

Can a State Legislature, by its own enactment alone, amend, alter or change its constitution in matters affecting franchise, or otherwise, when such Constitution clearly requires ratification[10] of proposed amendments by the qualified electors as a condition precedent?

Can it be denied that the enactment by a Legislature in 1956 of what may be termed a pseudo apportionment Act[11], giving to some citizens eighteen times the vote of other citizens in either the primary or the general election, lacks that quality which the *Fourteenth* and *Fifteenth Amendments* guarantee?

If these questions are answerable in the affirmative, we earnestly submit that constitutions are meaningless and superfluous, and that anarchy reigns supreme.

CONCLUSION

In conclusion, we most humbly and respectfully submit that the jurisdiction of the Court is manifest; that the wrong is admitted; that the evils are obvious; that the remedy is clear; that the relief is available, and this Court has never been found wanting in courage where the defense of human rights is involved.

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[10] See Appendix C, *infra*, at Page 31.
[11] See Appendix F, *infra*, at Page 33.

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APPENDIX A

ARTICLE XIII, SECTION 256 OF MISSISSIPPI CONSTITUTION OF 1890. The legislature may, at the first session after the Federal census of 1900, and decennially, thereafter, make a new apportionment of senators and representatives. At each apportionment each county then organized shall have at least one representative. The counties of Tishomingo, Alcorn, Prentiss, Lee, Itawamba, Tippah, Union, Benton, Marshall, Lafayette, Pontotoc, Monroe, Chickasaw, Calhoun, Yalobusha, Grenada, Carroll, Montgomery, Choctaw, Webster, Clay, Lowndes and Oktibbeha, or the territory now composing them, shall together never have less than forty-four representatives. The counties of Attala, Winston, Noxubee, Kemper, Leake, Neshoba, Launderdale, Newton, Scott, Rankin, Clarke, Jasper, Smith, Simpson, Copiah, Franklin, Lincoln, Lawrence, Covington, Jones, Wayne, Greene, Perry, Marion, Pike, Pearl River, Hancock, Harrison, and Jackson or the territory now composing them, shall together never have less than forty-four representatives; nor shall the remaining counties of the state, or the territory now composing them, ever have less than forty-four representatives. A reduction in the number of senators and representatives may be made by the legislature if the same be uniform in each of the three said divisions; but the number of representatives shall not be less than one hundred, nor more than one hundred and thirty-three, nor the number of senators less than thirty, nor more than forty-five, provided that new counties hereafter created shall be given at least one representative until the next succeeding apportionment.

APPENDIX B

CHAP. XIX.—*An Act to admit the State of Mississippi to Representation in the Congress of the United States.*

WHEREAS the people of Mississippi have framed and adopted a constitution of State government which is republican; and whereas the legislature of Mississippi elected under said constitution has ratified the fourteenth and fifteenth amendments to the Constitution of the United States; and whereas the performance of these several acts in good faith is a condition precedent to the representation of the State in Congress: therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said State of Mississippi is entitled to representation in the Congress of the United States: Provided, That before any member of the legislature of said State shall take or resume his seat, or any officer of said State shall enter upon the duties of his office, he shall take and subscribe, and file in the office of the secretary of State of Mississippi, for permanent preservation, an oath or affirmation in the form following: "I .....
....., do solemnly swear (or affirm) that I have never taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United

States, and afterward engage in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof, so help me God"; or under the pains and penalties of perjury, (as the case may be); or such person shall in like manner take, subscribe, and file the following oath or affirmation: "I, ..., do solemnly swear (or affirm) that I have, by act of Congress of the United States, been relieved from the disabilities imposed upon me by the fourteenth amendment of the Constitution of the United States, so help me God"; or under the pains and penalties of perjury, (as the case may be;) which oaths or affirmations shall be taken before and certified by any officer lawfully authorized to administer oaths. And any person who shall knowingly swear or affirm falsely in taking either of such oaths or affirmations shall be deemed guilty of perjury, and shall be punished therefor by imprisonment not less than one year, and not more than ten years, and shall be fined not less than one thousand dollars, and not more than ten thousand dollars. And in all trials for any violation of this act, the certificate of the taking of either of said oaths or affirmations, with proof of the signature of the party accused, shall be taken and held as conclusive evidence that such oath or affirmation was regularly and lawfully administered by competent authority: *And provided further*, That every such person who shall neglect for the period of thirty days next after the passage of this act to take, subscribe, and file such oath or affirmation as aforesaid, shall be deemed and taken, to all intents and purposes, to have vacated his office; *And provided further, That the State of Mississippi is admitted to representation in Congress as one of the States of the Union, upon the following fundamental conditions: First, That the constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized*, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effects, may be made in regard to the time and place of residence of voters. Second, That it shall never be lawful for the said State to deprive any citizen of the United States, on account of his race, color, or previous condition of servitude, of the right to hold office under the constitution and laws of said State, or upon any such ground to require of him any other qualifications for office than such as are required of all other citizens. Third, That the constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the school rights and privileges secured by the constitution of said State.

APPROVED, February 23, 1870. (Emphasis added)

APPENDIX C

ARTICLE XIII OF MISSISSIPPI CONSTITUTION OF 1869

ARTICLE XIII

ORDINANCES AND SCHEDULE.

MODE OF REVISING THE CONSTITUTION.

Whenever two-thirds of each branch of the legislature shall deem any change, alternation, or amendment necessary to this constitution, such proposed change, alteration or amendment, shall be read and passed by a two-thirds vote of each house respectively, on each day, for three several days; public notice shall then be given by the secretary of state, at least three months preceding the next general election, at which the qualified electors shall vote directly for or against such change, alteration or amendment; and if more than one amendment shall be submitted at one time, they shall be submitted in such manner and form, that the people may vote for or against each amendment separately; and if it shall appear that a majority of the qualified electors, voting for members of the legislature, shall have voted for the proposed change, alteration or amendment, then it shall be inserted by the next succeeding legislature as a part of this constitution, and not otherwise; *provided*, that no amendment, which may be made prior to the year one thousand eight hundred and eight-five, shall, in any manner, affect the eighteenth section of the bill of rights.

APPENDIX D

SECTIONS 140 AND 141 OF MISSISSIPPI CONSTITUTION OF 1890

Section 140. The governor of the state shall be chosen in the following manner: On the first Tuesday after the first Monday of November of A. D. 1895, and on the first Tuesday after the first Monday of November in every fourth year thereafter, until the day shall be changed by law, an election shall be held in the several counties and districts created for the election of members of the house of representatives in this state, for governor, and the person receiving in any county or such legislative district the highest number of votes cast therein, for said office, shall be holden to have received as many votes as such county or district is entitled to members in the house of representatives, which last named votes are hereby designated *"electoral votes."* In all cases where a representative is apportioned to two or more counties or districts, the electoral vote, based on such representative, shall be equally divided among such counties or districts. The returns of said election shall be certified by the election commissioners, or a majority of them, of the several counties, and transmitted, sealed, to the seat of government, directed to the secretary of state, and shall be by him safely kept and delivered to the speaker of the house of representatives at the next ensuing session of the legislature within one day after he shall have been elected.

The speaker shall, on the next Tuesday after he shall have received said returns, open and publish them in the presence of the house of representatives, and said house shall ascertain and count the vote of each county and legislative district and decide any contest that may be made concerning the same, and said decision shall be made by a majority of the whole number of members of the house of representatives concurring therein, by a viva voce vote, which shall be recorded in its journal; Provided, In case the two highest candidates have an equal number of votes in any county or legislative district, the electoral vote of such county or legislative district shall be considered as equally divided between them. The person found to have received a majority of all the electoral votes, and also a majority of the popular vote, shall be declared elected.

Section 141. If no person shall receive such majorities, *then the house of representatives shall proceed to choose a governor* from the two persons who shall have receieved the highest number of popular votes. The election shall be by viva voce vote, which shall be recorded in the journal, in such manner as to show for whom each member voted.

(Emphasis added)

APPENDIX E

SECTION 3107 OF MISSISSIPPI CODE, 1942, ANNOTATED (RECOMPILED)

§3107. State, district and county executive committees—how chosen.

The state executive committee shall consist of three members from each congressional district, to be chosen by the delegates from the different congressional districts, each district acting separately, and shall hold office for four (4) years and until their successors are chosen. A state convention shall be held by each political party in the state, in the year 1952, and every four (4) years thereafter, at the time and place to be designated by the state executive committee, appropriate notice of which shall be given by said committee, to select a state executive committee, to appoint delegates to the national convention, at the discretion of said state convention, to nominate presidential electors, to nominate a candidate for president and vice-president of the United States, adopt a platform, promulgate principles, and take such further action deemed proper by the convention. And the said convention may adjourn from day to day, or to such time and place, or times and places, as to it may appear proper and desirable. It is expressly provided that the state convention shall not in anywise be limited in the nomination of candidates for president and vice-president by any nomination made by any other convention. *Each county shall be entitled in the state convention to a number of votes equal to double its representation* in the House of Representatives. The delegates are to be selected by county delegate conventions, to be held in each county. Delegates shall be apportioned equally among the supervsiors' districts of each county, or each precinct in the county may be given representation in the county delegate convention in proportion to the votes cast as the preceding

presidential election for its party candidates. The state executive committee, or the chairman thereof, shall designate a date, giving at least ten (10) days' notice, for the precinct elections, on which date the electors at such precinct shall meet at ten o'clock A.M. at the usual voting places, and by secret ballot elect delegates to represent such voting precincts in the county convention. The county executive committee shall designate the number of delegates to be elected, and if it fail to designate a number each precinct will be entitled to one delegate in the the county convention. The delegate convention of each county shall choose a county executive committee, consisting of three members from each supervisor's district as above provided, and the county executive committee may, in their discretion, select from the county at large three (3) additional members of the committee, who shall hold office until the county convention convenes four (4) years later, but a county executive committee can submit the choice of their successors to any primary election held for other purposes, in which the committee so chosen shall hold office until the next county convention assembles under the provisions of this section. Flotorial and senatorial executive committees shall continue in office until after the returns are received and acted upon for the next general election, after which their successors are to be appointed by the various county executive committees composing such districts. All the present executive committees now acting shall continue until their successors are chosen, as herein provided. All vacancies in state and county executive committees shall be filled by such committees themselves and from the district in which the vacancies occur. All other vacancies are to be filled by the new executive committeemen, appointed by the county executive committees of the counties which made the original appointments. Executive committees for senatorial and flotorial districts having none, may be appointed by the various executive committees of the counties composing such districts. In any new county hereinafter created the members of the executive committee or committees for the county or counties from which the new county is taken who are resident citizens of the new county, at the time it is created shall constitute the first executive committee for the new county until their successors are selected in the manner provided by law, and they may fill any vacancy on the committee.

(Emphasis Added)

APPENDIX F

SECTION 3326 OF MISSISSIPPI CODE, 1942, ANNOTATED (RECOMPILED)

BEING CHAPTER 408, MISSISSIPPI LAWS OF 1956

Section 3326. Representatives — apportionment.

The number of representatives in the lower house of the Legislature shall be apportioned as follows:

First. The counties of Choctaw, Covington, Green, Hancock, Issaquena, Jones, Lawrence, Leflore, Marion, Neshoba, Pearl River, Perry, Quitman, Scott, Sharkey, Simpson, Smith, Sunflower, Tallahatchie,

Tishomingo, Tunica, Wayne, and Webster, each shall have one representative. In addition to the foregoing, the counties of Forrest, George, Humphreys, Jefferson Davis, Lamar, Stone, and Walthall shall each have one representative until an apportionment as provided for in the constitution shall be made by the Legislature.

Second. The counties of Alcorn, Attala, Coahoma, DeSoto, Newton, Pike, Pontotoc, Prentiss, Rankin and Union shall each have two (2) representatives and one of said representative positions is hereby designated "Representative Post No. 1" and the other representative position is hereby designated "Representative Post No. 2", and all candidates hereafter desiring to be elected to the Legislature as one of the representatives of Alcorn, Attala, Coahoma, DeSoto, Newton, Pike, Pontotoc, Prentiss, Rankin and Union Counties, shall announce his or her candidacy "for the Representative Post No. 1" or "for the Representative Post No. 2" and after the time for parties to announce for office, if there should be but one candidate for one of said election posts, or only one candidate for each of said posts, then such candidate may be declared to be elected without opposition, and the electors of the entire county shall elect representatives for both posts. The counties of Bolivar, Yalobusha, and Carroll, each shall have two (2) representatives, but both representatives shall at no time be chosen from the same judicial district of the county.

Provided further, that Kemper County shall have two (2) representatives without designation as to posts and who shall run from the county at large, as has been the custom, and under the same conditions as in the past.

Third. The counties of Holmes and Washington each shall have three (3) representatives; and one of said representative positions is hereby designated "Representative Post No. 1"; and one of said representative positions is hereby designated "Representative Post No. 2", and the remaining representative position is hereby designated "Representative Post No. 3", and all candidates hereafter desiring to be elected to the Legislature as one of the representatives of Holmes and Washington Counties, shall announce his or her candidacy "for the Representative Post No. 1" or "for the Representative Post No. 2" or "for the Representative Post No. 3", and after the time for parties to announce for office, if there should be but one candidate for one of said election posts, or only one candidate for each of said posts, then such candidate may be declared to be elected without opposition, and the electors of the entire county shall elect representatives for all three (3) posts.

The representation in the lower house of the Legislature for Warren County shall be selected as follows:

Two (2) representatives shall be elected from the county at large, and may come from any part of the county, and one representative shall be elected by the county at large but must come from that part of the county outside of the City of Vicksburg and the municipalities adjacent thereto. One of the said representative positions to be elected from the county at large is hereby designated "Representative Post

No. 1", and the other representative position to be elected from the county at large is hereby designated "Representative Post No. 2." The remaining representative position in Warren County to be elected by the county at large, but which must come from that part of the county outside of the City of Vicksburg and the municipalities adjacent thereto, is hereby designated "Representative Post No. 3." All candidates hereafter desiring to be elected to the Legislature as one of the representatives of Warren County, shall announce his or her candidacy "for the Representative Post No. 1" or "for the Representative Post No. 2," or "for the Representative Post No. 3," and after the time for parties to announce for office, if there should be but one candidate for one of said election posts, or only one candidate for each of said posts, then such candidate may be declared to be elected without opposition, and the electors of the entire county shall elect representatives for all three (3) posts.

Fourth. The counties of Monroe, Noxubee, Copiah, and Panola shall have three (3) representatives.

Fifth. The counties of Franklin and Lincoln each shall have one representative and a floater between them.

Sixth. The counties of Tippah and Benton each shall have one representative and a floater between them.

Seventh. The counties of Claiborne and Jefferson each shall have one representative and a floater between them.

Eighth. The counties of Clarke and Jasper each shall have one representative and a floater between them.

Ninth. The counties of Grenada and Montgomery each shall have one representative and a floater between them.

Tenth. The counties of Leake and Winston each shall have one representative and a floater between them.

Eleventh. The counties of Harrison and Jackson each shall have one representative and a floater between them. The election of the floater representative shall be alternated between the two (2) counties every four (4) years, the floater being elected from Harrison County in 1955.

Twelfth. The county of Yazoo shall have three (3) representatives, and the County of Hinds shall have three (3) representatives, and they shall have a floater between them. Provided, however, that two (2) of the representatives of Hinds County shall be elected by the City of Jackson and that one of the representatives of Hinds County shall be elected outside the limits of the City of Jackson. Provided, further, however, that the district qualifications of the representatives of Hinds County shall not apply to the floater representatives.

Two (2) representatives from Hinds County shall be elected from the City of Jackson, located therein; one of said representative positions is hereby designated "Representative Post No. 1" and the other representative position is hereby designated "Representative Post No. 2", and the remaining representative to be elected from Hinds Couunty shall be elected outside the limits of the City of Jackson, is hereby designated as "Representative Post No. 3," and all candidates hereafter

desiring to be elected to the Legislature as one of the representatives of Hinds County shall announce his or her candidacy "for the Representative Post No. 1" or "for the Representative Post No. 2," or "for the Representative Post No. 3," and after the time for parties to announce for office, if there should be but one candidate for one of said representative positions or election posts, or only one candidate for each of said representative positions or election posts, then such candidate may be declared to be elected without opposition.

Thirteenth. The counties of Amite, Madison and Wilkinson shall have two (2) representatives.

Fourteenth. The county of Marshall shall have three (3) representatives.

Fifteenth. The county of Lauderdale shall have three (3) representatives, one representative to be elected by the City of Meridian, and said representative position is hereby designated "Representative Post No. 1," one representative by the county outside the city limits, and said representative position is hereby designated "Representative Post No. 2," and one representative by the whole county, including Meridian, is hereby designated "Representative Post No. 3". All candidates hereafter desiring to be elected to the Legislature as one of the representatives of Lauderdale County shall announce his or her candidacy "for the Representative Post No. 1," or "for the Representative Post No. 2," or "for the Representative Post No. 3," and after the time for parties to announce for office, if there should be but one candidate for one of said election posts, or only one candidate for each of said posts, then such candidate may be declared ~~to be elected~~ without opposition.

Sixteenth. The county of Adams outside the City of Natchez shall have one representative, and the City of Natchez one representative.

Seventeenth. The county of Lowndes shall have three (3) representatives, two (2) of whom shall be elected by that part of the county east of the Tombigbee River and one by that portion of the county west of said river; and one of said representative positions in that part of the county east of the Tombigbee River is hereby designated "Representative Post No. 1," and the other representative position east of the Tombigbee River is hereby designated "Representative Post No. 2," and all candidates hereafter desiring to be elected to the Legislature as one of the representatives east of the Tombigbee River in Lowndes County shall announce his or her candidacy "for the Representative Post No. 1" or "for the Representative Post No. 2," and after the time for parties to announce for office, if there should be but one candidate for one of said election posts, or only one candidate for each of said posts, then such candidate may be declared to be elected without opposition, and the electors of the entire area of Lowndes County east of the Tombigbee River shall elect representatives for both posts.

Eighteenth. The county of Oktibbeha shall have two (2) representatives, one of whom shall be elected by that portion of the county east

of the line running north and south between ranges thirteen (13) and fourteen (14), and the other by that portion of the county west of said line.

Nineteenth. The county of Lee shall have two (2) resesentatives, the county of Itawamba one, and a floater between them. The county of Lee shall have two (2) representatives, and one of said representative positions is hereby designated "Representative Post No. 1," and the other representative position is hereby designated "Representative Post No. 2," and all candidates hereafter desiring to be elected to the Legislature as one of the representatives of Lee County shall announce his or her candidacy "for the Representative Post No. 1" or "for the Representative Post No. 2," and after the time for parties to announce for office, if there should be but one candidate for one of said election posts, or only one candidate for each of said posts, then such candidate may be declared to be elected without opposition, and the electors of the entire county shall elect representatives for both posts.

Twenieth. In counties divided into legislative districts any citizen of the county eligible for election to the House of Representatives shall be eligible to represent any district thereof.

Twenty-first. The counties of Clay, Calhoun, Lafayette, and Tate shall each have two (2) representatives; and one of said representative positions is hereby designated "Representative Post No. 1" and the other representative position is hereby designated "Representative Post No. 2," and all candidates hereafter desiring to be elected to the Legislature as one of the representatives of Clay, Calhoun, Lafayette, and Tate Counties, shall announce his or her candidacy "for the Representative Post No. 1" or "for the Representative Post No. 2," and after the time for parties to announce for office, if there should be but one candidate for one of said election posts, or only one candidate for each of said posts, then such candidate may be declared to be elected without opposition, and the electors of the entire county shall elect representatives for both posts.

Twenty-second. The county of Chickasaw shall have two (2) representatives, one of whom shall be a resident of and shall be elected by the qualified electors of that portion of the county in the first judicial district and the other shall be a resident of and shall be elected by the qualified electors of that portion of the county situated in the second judicial district.

Twenty-third. The county of Warren shall have three (3) representatives, one of whom shall be a resident of that part of said county outside of the corporate limits of the City of Vicksburg. All of said representatives shall run from and be elected by the county at large.